

Requested by Representative MARSH

**PROPOSED AMENDMENTS TO
HOUSE BILL 2138**

1 On page 1 of the printed bill, line 3, after “94.776,” insert “184.453,”.

2 In line 4, delete “197A.200,”.

3 In line 5, after “227.173,” insert “227.175,”.

4 Delete lines 13 through 22 and delete pages 2 and 3.

5 On page 4, delete lines 1 through 38 and insert:

6 **“SECTION 1.** ORS 197A.420 is amended to read:

7 “197A.420. (1) As used in this section **and section 3 of this 2025 Act:**

8 “(a) ‘City’ [*or*] **includes a local government with respect to land that**
9 **is within a city’s urban unincorporated lands.**

10 **“(b) ‘City with a population of 25,000 or greater’** includes, regardless of
11 size, any city within Tillamook County and the communities of
12 Barview/Twin Rocks/Watseco, Cloverdale, Hebo, Neahkahnie, Neskowin,
13 Netarts, Oceanside and Pacific City/Woods.

14 “[*(b) ‘Cottage clusters’ means groupings of no fewer than four detached*
15 *housing units per acre with a footprint of less than 900 square feet each and*
16 *that include a common courtyard.*]

17 “[*(c) ‘Middle housing’ means:*]

18 “[*(A) Duplexes;*]

19 “[*(B) Triplexes;*]

20 “[*(C) Quadplexes;*]

21 “[*(D) Cottage clusters; and*]

1 “[(E) *Townhouses.*]

2 “(c) ‘Cottage cluster’ means a grouping of attached or detached
3 dwelling units in any configuration that includes a common courtyard
4 or other shared community amenity and in which each unit has a
5 small footprint or floor area.

6 “(d) ‘Duplex’ means two attached or detached dwellings in any
7 configuration on a lot or parcel, other than a lot or parcel created by
8 a middle housing land division.

9 “(e)(A) ‘Middle housing’ means housing that consists of duplexes,
10 triplexes, quadplexes, cottage clusters or townhouses.

11 “(B) ‘Middle housing’ includes dwelling units that are:

12 “(i) Additional units allowed under section 3 of this 2025 Act; and

13 “(ii) Existing dwelling units to which additional units are added
14 under subsection (4) of this section.

15 “(f) ‘Middle housing land division’ has the meaning given that term
16 in ORS 92.031.

17 “(g) ‘Quadplex’ means four attached or detached dwellings in any
18 configuration on a lot or parcel, other than a lot or parcel created by
19 a middle housing land division.

20 “[(d)] (h) [*Townhouses*] ‘Townhouse’ means a dwelling unit constructed
21 in a row of two or more attached units, where each dwelling unit is located
22 on an individual lot or parcel and shares at least one common wall with an
23 adjacent unit.

24 “(i) ‘Triplex’ means three attached or detached dwellings in any
25 configuration on a lot or parcel, other than a lot or parcel created by
26 a middle housing land division.

27 “(j) ‘Zoned for residential use’ means land that:

28 “(A) Is within an urban growth boundary;

29 “(B) Has base zoning for, or is designated to allow, residential uses;

30 “(C) Allows the development of a detached single-unit dwelling;

1 **“(D) Is not zoned primarily for commercial, industrial, agricultural**
2 **or public uses; and**

3 **“(E) Is incorporated or:**

4 **“(i) Has sufficient urban services, as defined in ORS 195.065; and**

5 **“(ii) Is not zoned under an interim zoning designation that main-**
6 **tains the land’s potential for planned urban development.**

7 “(2) Except as provided in subsection (4) of this section, **each county,**
8 each city with a population of 25,000 or greater, and each [*county or*] city
9 **with a population of 1,000 or greater** within [*a metropolitan service*
10 *district*] **Metro**, shall allow the development of[:]

11 “[(a)] all middle housing types [*in areas*] **on each lot or parcel** zoned for
12 residential use. [*that allow for the development of detached single-family*
13 *dwellings; and*]

14 “[(b) A duplex on each lot or parcel zoned for residential use that allows
15 for the development of detached single-family dwellings.]

16 “(3) [*Except as provided in subsection (4) of this section,*] Each city not
17 within [*a metropolitan service district*] **Metro** with a population of 2,500 or
18 greater and less than 25,000 shall allow the development of a duplex on each
19 lot or parcel zoned for residential use [*that allows for the development of de-*
20 *tached single-family dwellings. Nothing in this subsection prohibits a local*
21 *government from allowing middle housing types in addition to duplexes*].

22 “[(4)(a) Except within Tillamook County, this section does not apply to:]

23 “[(A) Cities with a population of 1,000 or fewer, except inside of Tillamook
24 County;]

25 “[(B) Lands not within an urban growth boundary;]

26 “[(C) Lands that are not incorporated and also lack sufficient urban ser-
27 vices, as defined in ORS 195.065; or]

28 “[(D) Lands that are not incorporated and are zoned under an interim
29 zoning designation that maintains the land’s potential for planned urban de-
30 velopment.]

1 “[(b) This section does not apply to lands that are not zoned for residential
2 use, including lands zoned primarily for commercial, industrial, agricultural
3 or public uses.]

4 “(4)(a) **Each city required to allow middle housing under subsection
5 (2) or (3) of this section shall allow the lot or parcel to include existing
6 housing consisting of:**

7 “(A) **One single-unit dwelling;**

8 “(B) **One single-unit dwelling plus one accessory dwelling unit; or**

9 “(C) **One duplex.**

10 “(b) **The city may require only the new units, and not the existing
11 units, to comply with siting and design standards adopted under sub-
12 section (5) of this section.**

13 “(c) **Existing units on the lot or parcel may be separated from the
14 new units by a middle housing land division and are considered a sin-
15 gle unit for the purposes of such division.**

16 “(5) Local governments:

17 “(a) **May regulate siting and design of middle housing required to be
18 permitted under this section, provided that the regulations do not[,] individ-
19 ually or cumulatively[,] discourage, through unreasonable costs or delay,
20 the development of all middle housing types permitted in the area [through
21 unreasonable costs or delay].**

22 “(b) [Local governments] **May regulate middle housing to comply with
23 protective measures adopted pursuant to statewide land use planning goals.**

24 “(c) **May not, based on traffic impacts from any individual middle
25 housing development on a lot or parcel that is designated for residen-
26 tial infill or redevelopment:**

27 “(A) **Require a traffic impact analysis; or**

28 “(B) **Attribute an exaction other than a development requirement
29 to the middle housing’s lot or parcel.**

30 “(6) This section does not prohibit local governments from permitting:

1 “(a) [*Single-family*] **Single-unit** dwellings in areas zoned to allow for
2 [*single-family*] **single-unit** dwellings; or

3 “(b) Middle housing in areas not required under this section.

4 “(7) A local government that amends its comprehensive plan or land use
5 regulations relating to allowing additional middle housing is not required to
6 consider whether the amendments significantly affect an existing or planned
7 transportation facility.

8 “**SECTION 2. Section 3 of this 2025 Act is added to and made a part**
9 **of ORS chapter 197A.**

10 “**SECTION 3. (1) As used in this section:**

11 “(a) ‘**Accessible homeownership unit**’ means a unit of housing that
12 complies with the ‘Type A’ requirements applicable to units as set
13 forth in the Standard for Accessible and Usable Buildings and Facili-
14 ties published by the International Code Council and as referenced by
15 the state building code.

16 “(b) ‘**Affordable homeownership unit**’ means a unit of housing that
17 is subject to an affordable housing covenant, as described in ORS
18 456.270 to 456.295, that:

19 “(A) **Makes the unit available and affordable to purchase and to**
20 **own for families with incomes below an amount limit as published on**
21 **an annual basis by the Oregon Department of Administrative Services**
22 **per region; and**

23 “(B) **Is enforceable for a duration of not less than 10 years from the**
24 **date of the certificate of occupancy.**

25 “(2) **The definitions in ORS 197A.420 apply to this section.**

26 “(3) **On any lot or parcel on which middle housing may be sited**
27 **under ORS 197A.420 (2) or (3), except for urban unincorporated land**
28 **not within Metro and subject to ORS 197A.420 (5), if one or more of the**
29 **units of middle housing is an accessible or affordable homeownership**
30 **unit, a city shall allow the additional development of:**

1 “(a) For any allowable duplex or triplex, one additional attached or
2 detached dwelling unit, resulting in a triplex or quadplex.

3 “(b) For any allowable townhouse, quadplex or cottage cluster, up
4 to two additional attached or detached dwelling units, resulting in
5 additional townhouse or cottage cluster units or attached or detached
6 five-unit or six-unit developments.

7 “(4) The additional units under this section are subject to the reg-
8 ulations under ORS 197A.420 (5), except that a city must allow
9 commensurate increases to the developable area, floor area, height or
10 density requirements to allow for the development of the units.

11 “(5) This section does not limit a local government from enacting
12 density bonuses that provide a greater number of accessible or af-
13 fordable homeownership units, or housing that is affordable to more
14 families, than required by this section.

15 “SECTION 4. Section 3, chapter 639, Oregon Laws 2019, as amended by
16 section 21, chapter 223, Oregon Laws 2023, and section 3, chapter 283, Oregon
17 Laws 2023, is amended to read:

18 “**Sec. 3.** (1) Notwithstanding ORS 197.646, a local government shall adopt
19 land use regulations or amend its comprehensive plan to implement ORS
20 [197.758] **197A.420 or section 3 of this 2025 Act** no later than:

21 “(a) June 30, 2021, for each city subject to ORS 197.758 (3) (2021 Edition)
22 **as in effect on January 1, 2023;**

23 “(b) June 30, 2022, for each local government subject to ORS [197.758
24 (2)] **197A.420 (2)**, except as provided in [*paragraph (d)*] **paragraphs (d) to**
25 **(f)** of this subsection;

26 “(c) June 30, 2025, for each city subject to ORS [197.758 (3), *as amended*
27 *by section 20 of this 2023 Act*] **197A.420 (3) but not included in paragraph**
28 **(a) of this subsection; [or]**

29 “(d) July 1, 2025, for each city, as defined in ORS [197.758] **197A.420**, in
30 Tillamook County[.];

1 “(e) Except as provided in paragraph (f) of this subsection, July 1,
2 2026, for cities to conform with section 3 of this 2025 Act or the
3 amendments to ORS 197A.420 by section 1 of this 2025 Act; or

4 “(f) January 1, 2028, for cities to conform with amendments to ORS
5 197A.420 by section 1 of this 2025 Act pertaining to changes relating to
6 cottage clusters.

7 “(2) The Land Conservation and Development Commission, with the as-
8 sistance of the Building Codes Division of the Department of Consumer and
9 Business Services, shall develop a model middle housing ordinance no later
10 than December 31, 2020.

11 “(3) A local government that has not acted within the time provided under
12 subsection (1) of this section shall directly apply the model ordinance de-
13 veloped by the commission under subsection (2) of this section [*under*] **as**
14 **provided** by ORS 197.646 (3) until the local government acts as described in
15 subsection (1) of this section.

16 “(4) In adopting regulations or amending a comprehensive plan under this
17 section, a local government shall consider ways to increase the affordability
18 of middle housing by considering ordinances and policies that include but
19 are not limited to:

20 “(a) Waiving or deferring system development charges;

21 “(b) Adopting or amending criteria for property tax exemptions under
22 ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property
23 tax freezes under ORS 308.450 to 308.481; and

24 “(c) Assessing a construction tax under ORS 320.192 and 320.195.”.

25 On page 5, line 14, delete “December 31” and insert “June 30”.

26 After line 27, insert:

27 “**SECTION 5a.** ORS 184.453, as amended by section 6, chapter 102,
28 Oregon Laws 2024, is amended to read:

29 “184.453. (1) On an annual basis the Oregon Department of Administrative
30 Services shall conduct a statewide housing analysis. The analysis must be

1 conducted statewide and segmented into regions as determined by the de-
2 partment. The analysis shall estimate factors including, but not limited to:

3 “(a) Projected needed housing units over the next 20 years;

4 “(b) Current housing underproduction;

5 “(c) Housing units needed for people experiencing homelessness; and

6 “(d) Housing units projected to be converted into vacation homes or sec-
7 ond homes during the next 20 years.

8 “(2) At the time the department performs the housing analysis under
9 subsection (1) of this section, the department shall allocate a housing need
10 for each city. For Metro urban unincorporated lands, as defined in ORS
11 197A.015, the department shall make one allocation for each county in Metro.

12 “(3) In making an allocation under subsection (2) of this section, the de-
13 partment shall consider:

14 “(a) The forecasted population growth under ORS 195.033 or 195.036;

15 “(b) The forecasted regional job growth;

16 “(c) An equitable statewide distribution of housing for income levels de-
17 scribed in subsection (4) of this section;

18 “(d) The estimates made under subsection (1) of this section;

19 “(e) For cities within Metro, the needed housing projected under ORS
20 197A.348 (2); and

21 “(f) The purpose of the Oregon Housing Needs Analysis under ORS
22 184.451 (1).

23 “(4) In estimating and allocating housing need under this section, the
24 department shall segment need by the following income levels:

25 “(a) Housing affordable to households making less than 30 percent of
26 median family income;

27 “(b) Housing affordable to households making 30 percent or more and less
28 than 60 percent of median family income;

29 “(c) Housing affordable to households making 60 percent or more and less
30 than 80 percent of median family income;

1 “(d) Housing affordable to households making 80 percent or more and less
2 than 120 percent of median family income; and

3 “(e) Housing affordable to households making 120 percent or more of me-
4 dian family income.

5 “**(5) On an annual basis, the department shall publish income**
6 **affordability requirements, by region, as described in section 3 (1) of**
7 **this 2025 Act.**”.

8 Delete lines 31 through 45.

9 On page 6, delete lines 1 and 2 and insert:

10 “**SECTION 6.** ORS 197A.430 is amended to read:

11 “197A.430. (1) As used in this section, ‘single room occupancy’ means a
12 residential development with no fewer than four attached **or detached** units
13 that are independently rented and lockable and provide living and sleeping
14 space for the exclusive use of an occupant, but require that the occupant
15 share sanitary or food preparation facilities with other units in the occu-
16 pancy.

17 “(2) Within an urban growth boundary, each local government shall allow
18 the development of a single room occupancy:

19 “(a) With up to six units on each lot or parcel zoned to allow for the
20 development of [*a detached single-family*] **an attached or detached single-**
21 **unit** dwelling; and

22 “[*(b) With the number of units consistent with the density standards of a*
23 *lot or parcel zoned to allow for the development of residential dwellings with*
24 *five or more units.*]

25 “(b) **With up to three times the number of units allowed by the**
26 **maximum density standards of a lot or parcel on which is allowed**
27 **multiunit housing with five or more dwelling units.**

28 “(3)(a) **For a single room occupancy, a local government may not**
29 **require more parking for every three single room occupancy units**
30 **than the local government requires for:**

1 “(A) A single detached dwelling, if the single room occupancy de-
2 velopment has six or fewer units; or

3 “(B) A dwelling unit in a multiunit housing development, if the
4 single room occupancy development has more than six units.

5 “(b) This subsection does not apply to a single room occupancy used
6 as a residential care facility as defined in ORS 443.400.”.

7 In line 10, delete “single-family” and insert “single-unit”.

8 Delete lines 32 through 45 and delete page 7.

9 On page 8, delete lines 1 through 39 and insert:

10 “**NOTE:** Sections 11 and 12 were deleted by amendment. Subsequent
11 sections were not renumbered.

12 “**SECTION 13.** ORS 197A.400, as amended by section 2, chapter 533,
13 Oregon Laws 2023, and section 4, chapter 111, Oregon Laws 2024, is amended
14 to read:

15 “197A.400. (1)(a) Except as provided in subsection (3) of this section, a
16 local government [*may*] **shall** adopt and apply **an approval process that**
17 **applies** only clear and objective standards, conditions and procedures regu-
18 lating:

19 “(A) The development of housing[, *including needed housing, on land*
20 *within an urban growth boundary, unincorporated communities designated in*
21 *a county’s acknowledged comprehensive plan after December 5, 1994,*
22 *nonresource lands and areas zoned for rural residential use as defined in ORS*
23 *215.501.*];

24 “(B) **Urban services, as defined in ORS 195.065, necessary for the**
25 **development of housing and specific to the housing; or**

26 “(C) **Tree removal codes for residential development.**

27 “(b) The standards, conditions and procedures:

28 “[(a)] (A) May include[, *but are not limited to,*] one or more provisions
29 regulating the density or height of a development.

30 “[(b)] (B) May not have the effect, either in themselves or cumulatively,

1 of discouraging needed housing through unreasonable cost or delay.

2 “[*c*] (C) May be contained in a comprehensive plan, land use regulation
3 or an ordinance relating to housing adopted by a city that adopts, including
4 by reference, a model ordinance adopted by the Land Conservation and De-
5 velopment Commission that comports with any qualifications, conditions or
6 applicability of the model ordinance.

7 **“(c) This subsection applies only within:**

8 **“(A) An urban growth boundary;**

9 **“(B) An unincorporated community designated in a county’s ac-**
10 **knowledged comprehensive plan after December 5, 1994;**

11 **“(C) Nonresource land; and**

12 **“(D) An area zoned for rural residential use as defined in ORS**
13 **215.501.**

14 “(2) The provisions of subsection (1) of this section do not apply to:

15 “(a) An application or permit for residential development in an area
16 identified in a formally adopted central city plan, or a regional center as
17 defined by Metro, in a city with a population of 500,000 or greater.

18 “(b) An application or permit for residential development in historic areas
19 designated for protection under a land use planning goal protecting historic
20 areas.

21 “(3) In addition to an approval process [*for needed housing based on clear*
22 *and objective standards, conditions and procedures as*] provided in subsection
23 (1) of this section, a local government may adopt and apply an alternative
24 approval process for applications and permits for residential development
25 based on approval criteria that are not clear and objective if:

26 “(a) The applicant retains the option of proceeding under the approval
27 process that meets the requirements of subsection (1) of this section;

28 “(b) The approval criteria for the alternative approval process comply
29 with applicable statewide land use planning goals and rules; and

30 “(c) The approval criteria for the alternative approval process authorize

1 a density at or above the density level authorized in the zone under the ap-
2 proval process provided in subsection (1) of this section.

3 “(4) Subject to subsection (1) of this section, this section does not infringe
4 on a local government’s prerogative to:

5 “(a) Set approval standards under which a particular housing type is
6 permitted outright;

7 “(b) Impose special conditions upon approval of a specific development
8 proposal; or

9 “(c) Establish approval procedures.”.

10 On page 9, line 2, delete “5” and insert “3”.

11 Delete lines 12 through 14 and insert:

12 “(A) A single duplex, triplex, quadplex, cottage cluster or structure con-
13 taining townhouses;

14 “(B) Additional units as allowed by section 3 (3) of this 2025 Act; and

15 “(C) Retained or rehabilitated existing units allowed under ORS 197A.420
16 (4), if any;”.

17 In line 37, after “197.365” insert “, if requested by the applicant”.

18 In line 45, after “application” insert “for a tentative plan”.

19 On page 10, line 7, delete “separated” and insert “allocated its own lot
20 or parcel”.

21 On page 16, lines 43 and 44, delete the boldfaced material and insert “If
22 requested by the applicant, a local government”.

23 On page 18, line 33, after “division” insert “upon the request of the ap-
24 plicant”.

25 On page 19, delete lines 23 through 33 and insert:

26 “(c) Regulating cottage clusters for the purposes of incentivizing the
27 provision of smaller, less expensive housing, shared community amenities and
28 other public benefits in a manner that is financially feasible and including
29 regulations that implement the term ‘small footprint or floor area’ as used
30 within the definition of cottage clusters in ORS 197A.420;

1 “(d) Amending siting and design parameters for housing types, to better
2 facilitate housing production, availability and affordability;

3 “(e) Amending permissible discretionary criteria applied by local govern-
4 ment in evaluating housing under ORS 197A.400 (3) in accordance with
5 principles set forth in ORS 197A.025;

6 “(f) Repealing requirements for demolition review for houses listed in the
7 National Register of Historic Places as contributing structures to a historic
8 district that are not themselves named s historic structures;”.

9 In line 42, after “occupancies” insert a period and delete the rest of the
10 line.

11 After line 44, insert:

12 “(c) Adopt operative and applicable dates for the rules, subject to section
13 3, chapter 639, Oregon Laws 2019.

14 “(d) Provide a report on or before September 15, 2027, to the interim
15 committees of the Legislative Assembly relating to land use, in the manner
16 provided in ORS 192.245, on the feasibility and advisability of providing safe
17 harbor protections for cities that use the commission’s model system devel-
18 opment charges under subsection (1)(g) of this section or otherwise
19 incentivising the use of the models.

20

21 **“DELAYED OPERATIVE DATE**

22

23 **“SECTION 22a. The amendments to ORS 92.031 and 92.044 by
24 sections 14 and 15 of this 2025 Act become operative on July 1, 2026.”.**

25 On page 31, line 29, delete “single-family” and insert “single-unit”.

26 On page 40, after line 37, insert:

27 **“SECTION 44a. ORS 227.175, as amended by section 5, chapter 111,
28 Oregon Laws 2024, is amended to read:**

29 “227.175. (1) When required or authorized by a city, an owner of land may
30 apply in writing to the hearings officer, or such other person as the city

1 council designates, for a permit or zone change, upon such forms and in such
2 a manner as the city council prescribes. The governing body shall establish
3 fees charged for processing permits at an amount no more than the actual
4 or average cost of providing that service.

5 “(2) The governing body of the city shall establish a consolidated proce-
6 dure by which an applicant may apply at one time for all permits or zone
7 changes needed for a development project. The consolidated procedure is
8 subject to the time limitations set out in ORS 227.178. The consolidated
9 procedure shall be available for use at the option of the applicant no later
10 than the time of the first periodic review of the comprehensive plan and land
11 use regulations.

12 “(3) Except as provided in subsection (10) of this section, the hearings
13 officer shall hold at least one public hearing on the application.

14 “(4)(a) A city may not approve an application unless the proposed devel-
15 opment of land would be in compliance with the comprehensive plan for the
16 city and other applicable land use regulation or ordinance provisions, in-
17 cluding an ordinance described in ORS 197A.400 [(1)(c)] **(1)(b)(C)**. The ap-
18 proval may include such conditions as are authorized by ORS 227.215 or any
19 city legislation.

20 “(b)(A) A city may not deny an application for a housing development
21 located within the urban growth boundary if the development complies with
22 clear and objective standards, including clear and objective design standards
23 contained in the city comprehensive plan or land use regulations.

24 “(B) This paragraph does not apply to:

25 “(i) Applications or permits for residential development in areas described
26 in ORS 197A.400 (2); or

27 “(ii) Applications or permits reviewed under an alternative approval pro-
28 cess adopted under ORS 197A.400 (3).

29 “(c) A city may not condition an application for a housing development
30 on a reduction in density if:

1 “(A) The density applied for is at or below the authorized density level
2 under the local land use regulations; and

3 “(B) At least 75 percent of the floor area applied for is reserved for
4 housing.

5 “(d) A city may not condition an application for a housing development
6 on a reduction in height if:

7 “(A) The height applied for is at or below the authorized height level
8 under the local land use regulations;

9 “(B) At least 75 percent of the floor area applied for is reserved for
10 housing; and

11 “(C) Reducing the height has the effect of reducing the authorized density
12 level under local land use regulations.

13 “(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may
14 condition an application for a housing development on a reduction in density
15 or height only if the reduction is necessary to resolve a health, safety or
16 habitability issue or to comply with a protective measure adopted pursuant
17 to a statewide land use planning goal. Notwithstanding ORS 197.350, the city
18 must adopt findings supported by substantial evidence demonstrating the
19 necessity of the reduction.

20 “(f) As used in this subsection:

21 “(A) ‘Authorized density level’ means the maximum number of lots or
22 dwelling units or the maximum floor area ratio that is permitted under local
23 land use regulations.

24 “(B) ‘Authorized height level’ means the maximum height of a structure
25 that is permitted under local land use regulations.

26 “(C) ‘Habitability’ means being in compliance with the applicable pro-
27 visions of the state building code under ORS chapter 455 and the rules
28 adopted thereunder.

29 “(5) Hearings under this section may be held only after notice to the ap-
30 plicant and other interested persons and shall otherwise be conducted in

1 conformance with the provisions of ORS 197.797.

2 “(6) Notice of a public hearing on a zone use application shall be provided
3 to the owner of an airport, defined by the Oregon Department of Aviation
4 as a ‘public use airport’ if:

5 “(a) The name and address of the airport owner has been provided by the
6 Oregon Department of Aviation to the city planning authority; and

7 “(b) The property subject to the zone use hearing is:

8 “(A) Within 5,000 feet of the side or end of a runway of an airport de-
9 termined by the Oregon Department of Aviation to be a ‘visual airport’; or

10 “(B) Within 10,000 feet of the side or end of the runway of an airport
11 determined by the Oregon Department of Aviation to be an ‘instrument air-
12 port.’

13 “(7) Notwithstanding the provisions of subsection (6) of this section, no-
14 tice of a zone use hearing need only be provided as set forth in subsection
15 (6) of this section if the permit or zone change would only allow a structure
16 less than 35 feet in height and the property is located outside of the runway
17 ‘approach surface’ as defined by the Oregon Department of Aviation.

18 “(8) If an application would change the zone of property that includes all
19 or part of a mobile home or manufactured dwelling park as defined in ORS
20 446.003, the governing body shall give written notice by first class mail to
21 each existing mailing address for tenants of the mobile home or manufac-
22 tured dwelling park at least 20 days but not more than 40 days before the
23 date of the first hearing on the application. The governing body may require
24 an applicant for such a zone change to pay the costs of such notice.

25 “(9) The failure of a tenant or an airport owner to receive a notice which
26 was mailed does not invalidate any zone change.

27 “(10)(a)(A) The hearings officer or such other person as the governing
28 body designates may approve or deny an application for a permit without a
29 hearing if the hearings officer or other designated person gives notice of the
30 decision and provides an opportunity for any person who is adversely af-

1 fected or aggrieved, or who is entitled to notice under paragraph (c) of this
2 subsection, to file an appeal.

3 “(B) Written notice of the decision shall be mailed to those persons de-
4 scribed in paragraph (c) of this subsection.

5 “(C) Notice under this subsection shall comply with ORS 197.797 (3)(a),
6 (c), (g) and (h) and shall describe the nature of the decision. In addition, the
7 notice shall state that any person who is adversely affected or aggrieved or
8 who is entitled to written notice under paragraph (c) of this subsection may
9 appeal the decision by filing a written appeal in the manner and within the
10 time period provided in the city’s land use regulations. A city may not es-
11 tablish an appeal period that is less than 12 days from the date the written
12 notice of decision required by this subsection was mailed. The notice shall
13 state that the decision will not become final until the period for filing a local
14 appeal has expired. The notice also shall state that a person who is mailed
15 written notice of the decision cannot appeal the decision directly to the Land
16 Use Board of Appeals under ORS 197.830.

17 “(D) An appeal from a hearings officer’s decision made without hearing
18 under this subsection shall be to the planning commission or governing body
19 of the city. An appeal from such other person as the governing body desig-
20 nates shall be to a hearings officer, the planning commission or the govern-
21 ing body. In either case, the appeal shall be to a de novo hearing.

22 “(E) The de novo hearing required by subparagraph (D) of this paragraph
23 shall be the initial evidentiary hearing required under ORS 197.797 as the
24 basis for an appeal to the Land Use Board of Appeals. At the de novo hear-
25 ing:

26 “(i) The applicant and other parties shall have the same opportunity to
27 present testimony, arguments and evidence as they would have had in a
28 hearing under subsection (3) of this section before the decision;

29 “(ii) The presentation of testimony, arguments and evidence may not be
30 limited to issues raised in a notice of appeal; and

1 “(iii) The decision maker shall consider all relevant testimony, arguments
2 and evidence that are accepted at the hearing.

3 “(b) If a local government provides only a notice of the opportunity to
4 request a hearing, the local government may charge a fee for the initial
5 hearing. The maximum fee for an initial hearing shall be the cost to the local
6 government of preparing for and conducting the appeal, or \$250, whichever
7 is less. If an appellant prevails at the hearing or upon subsequent appeal, the
8 fee for the initial hearing shall be refunded. The fee allowed in this para-
9 graph does not apply to appeals made by neighborhood or community or-
10 ganizations recognized by the governing body and whose boundaries include
11 the site.

12 “(c)(A) Notice of a decision under paragraph (a) of this subsection shall
13 be provided to the applicant and to the owners of record of property on the
14 most recent property tax assessment roll where such property is located:

15 “(i) Within 100 feet of the property that is the subject of the notice when
16 the subject property is wholly or in part within an urban growth boundary;

17 “(ii) Within 250 feet of the property that is the subject of the notice when
18 the subject property is outside an urban growth boundary and not within a
19 farm or forest zone; or

20 “(iii) Within 750 feet of the property that is the subject of the notice when
21 the subject property is within a farm or forest zone.

22 “(B) Notice shall also be provided to any neighborhood or community
23 organization recognized by the governing body and whose boundaries include
24 the site.

25 “(C) At the discretion of the applicant, the local government also shall
26 provide notice to the Department of Land Conservation and Development.

27 “(11) A decision described in ORS 227.160 (2)(b) shall:

28 “(a) Be entered in a registry available to the public setting forth:

29 “(A) The street address or other easily understood geographic reference
30 to the subject property;

1 “(B) The date of the decision; and

2 “(C) A description of the decision made.

3 “(b) Be subject to the jurisdiction of the Land Use Board of Appeals in
4 the same manner as a limited land use decision.

5 “(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

6 “(12) At the option of the applicant, the local government shall provide
7 notice of the decision described in ORS 227.160 (2)(b) in the manner required
8 by ORS 197.797 (2), in which case an appeal to the board shall be filed within
9 21 days of the decision. The notice shall include an explanation of appeal
10 rights.

11 “(13) Notwithstanding other requirements of this section, limited land use
12 decisions are subject to the requirements set forth in ORS 197.195 and
13 197.828.”.

14
